



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MILIMANI**

**ELC SUIT NO. 745 OF 2013**

**ISABEL WAITHIRA NJOROGE.....**  
**.....PETITIONER**

**=VERSUS=**

**THE PERMANENT SECRETARY MINISTRY OF STATE FOR PROVINCIAL  
ADMINISTRATION AND INTERNAL SECURITY.....**  
**.....1<sup>ST</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF NATIONAL  
POLICE SERVICE.....2<sup>ND</sup> RESPONDENT**

**HON. THE ATTORNEY GENERAL.....3<sup>RD</sup>**  
**RESPONDENT**

**THE COUNTY COUNCIL OF KIAMBU.....4<sup>TH</sup>**  
**RESPONDENT**

**THE COUNTY GOVERNMENT OF KIAMBU.....5<sup>TH</sup>**  
**RESPONDENT**

**JUDGEMENT:**

By a Petition brought under Articles, 2, 6, 10, 19, 20, 21, 23, 40, 43, 47, 50(1)64, 129(2), 159, 165(3)6, 7, and Section 7 of part 1 of the 6th schedule of the Constitution of Kenya 2010, the Petitioner herein **Isabel Waithira Njoroge** has sought for various declarations.

- a. *A declaration that the Respondents by themselves and anyone claiming under them are not entitled to occupy LIMURU/RIRONI/T.381 situated in Limuru.*
- b. *A declaration that the petitioner’s fundamental rights to fair administrative action, access to information and right to a fair hearing have been violated, trespassed on and trampled upon by the Respondents, an order for compensation for general damages for breach of Article 47 of the Constitution of Kenya 2010.*
- c. *An order that the Respondents by themselves, their servants or agents, employees or anyone claiming under them.*

- d. *An order for compensation for general damages for breach of Article 40 of the Constitution of Kenya.*
- e. *In the alternative to only (c) the Respondents be ordered to purchase the property at current market value.*
- f. *Costs of the Petition be borne by the Respondents.*

The Petition was supported by the grounds stated on the face of the petition and the supporting Affidavit of **Isabel Wathira Njoroge**. The Petitioner alleged that she is the registered owner of Land **Parcel No.Limuru/Rironi/T.381** and on 29th April, 1983, the 4th Respondent (herein after referred to as the council) approached her and expressed interest in compulsory acquiring the suit property in exchange of Parcel **No.Limuru/Rironi/326** which was **0.25 acres** for purpose of public use. She further averred that she was to be compensated further in monetary terms as her subject property was bigger in size being **0.09 hectares**.

The petitioner also averred that the acquisition was duly approved by the 4<sup>th</sup> Respondent vide minutes No. 108/83 of the Council's meeting dated 29<sup>th</sup> April, 1983. Further that on 4<sup>th</sup> January 1984, she was directed to surrender the Title Deed of the subject property to the 4<sup>th</sup> Respondent in order that the subject property could be exchanged with **Land Parcel No.Limuru/Rironi/326**.

The Petitioner alleged that she surrendered the said Title Deed as requested by the 4<sup>th</sup> Respondent pending the completion of the compulsory acquisition process. That after surrendering the Title Deed, the Petitioner stopped farming on the subject property and in the year 1984, the Provincial Administration and the Kenya Police, set up and proceeded to construct on the subject property a Police Post and Chief's Camp. That it was the Petitioner's legitimate expectations that on the 29<sup>th</sup> April, 1983 when the compulsory acquisition was being effected paving way for occupation by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was that the 4<sup>th</sup> Respondent would act in a legal, professional, rational, just and expeditious manner in actualizing the compensation by way of exchange of the aforesaid parcels of land and therefore did not oppose the construction of the Police Station and the Chief's Camp. The 4<sup>th</sup> Respondent had represented to her that the compensation would be expeditious and in accordance with the law. However, the said compensation took too long and later on 25<sup>th</sup> April, 2001, the 4<sup>th</sup> Respondent informed the Petitioner to collect her Title Deed and retain the subject property. Though the Petitioner by a letter dated 24<sup>th</sup> April, 2009, informed the Respondents to vacate the subject property, they have refused to do so.

Further, the Petitioner averred that the Respondents have failed and/or neglected to follow the laid down procedures in law in acquiring the subject property thus depriving the Petitioner a right to own and enjoy her property as stipulated in **Article 40 of the Constitution**. The Petitioner has also been deprived of the benefit of using the subject property for her economic gain. The petitioner averred that her constitutional and fundamental right to property has been infringed.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents though served with the Petition did not enter appearance not file reply to the Petition. However the 4<sup>th</sup> and 5<sup>th</sup> Respondents opposed a Petition through a Replying Affidavit sworn by **Patrick Mbaru**, an employee of the 5<sup>th</sup> Respondent. The deponent averred that it is true the 4<sup>th</sup> Respondent approached the Petitioner sometime in the year 1983 with the desire to acquire the suit property for public use. This was to be in exchange of the suit property with **Parcel No. Limuru/Rironi/326** measuring **0.25 acres**. Further, the buildings were put up on the suit property and the Chief and Police occupied them. He conceded that by the year 2001, the Petitioner had not yet been compensated and the 4<sup>th</sup> Respondent vide their letter dated 25<sup>th</sup> April 2001, recommended that the Petitioner do retain the suit property and the 4<sup>th</sup> Respondent returned to her the Title Deed as evidenced by PM2.

Further, the 4<sup>th</sup> Respondent acceded to the Petitioners request to have the Chief and the Police vacate

the suit property and in the year 2010, the 4<sup>th</sup> Respondent informed the District Commissioner who was in office at the time of the dispute. The 4<sup>th</sup> Respondent further deponed that it decided to relocate the Chief's Camp to another Parcel of Land, **LR Limuru/Rironi 418 & 419** as evidence by **PM4**. However, despite the 4<sup>th</sup> Respondent having identified the above Parcel of Land as an alternative Land, the Chief and Police have declined to vacate the suit property. It was averred that the 4<sup>th</sup> Respondent has done its part as provided for vide the law and it is up to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to ensure that the Chief's camp and Police Post were relocated from the Petitioner's Land which is private property to Parcels of Land **LR Limuru/Rironi/418 & 419**. The 4<sup>th</sup> Respondent prayed that the general damages and cost of the Petition be borne by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents.

The parties herein canvassed this Petition by way of written submissions. I have considered the said written submissions and the relevant laws and I make the following findings. The Petitioner has filed this Petition seeking for various declarations. Her claim was opposed by the 4<sup>th</sup> and 5<sup>th</sup> Respondents who stated that the Petitioner indeed deserves general damages but from 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents.

From the available evidence and documents presented to this Court, there are various uncontroverted facts. There is no doubt that the 4<sup>th</sup> Defendant approached the Petitioner in the year 1983 and acquired the Petitioner's property with a view to actualizing the **Compulsory Acquisition**. There is also no doubt that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents proceeded to construct a Chief's camp and Police Station on the property. However, the Respondents failed to actualize the compulsory acquisition. It is not in doubt that in the year 2001, the 4<sup>th</sup> Respondent returned the Petitioner's Certificate of Lease but the 1<sup>st</sup> and 2<sup>nd</sup> Respondent continued to occupy the Parcel of Land.

The issue now for determination is whether the Petitioner is entitled to the Declarations sought.

The 4<sup>th</sup> Respondent did admit that it initiated the process of compulsory acquisition of the Petitioner's land. However, even after the land was acquired by 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Petitioner was not compensated and 4<sup>th</sup> Respondent had to return her Title Deed in the year 2001. There is no doubt from the Petitioner's Exhibit 1 that the Petitioner (Isabel Wathira Njoroge) is the registered proprietor of **Limuru/Rironi/T.381** which she acquired on 27/5/1980.

The petitioner had surrendered the subject land to the 4<sup>th</sup> Respondent with the hope that it would have been acquired compulsorily by the Respondents. This would have been in accordance with Section 75(1) of the former Constitution, which was in operation when the process in issue was started.

**Section 75(1)** of the old constitution read as follows:-

**“ No property of any description can be compulsorily taken possession of and no interest or right over property of any description can be compulsorily acquired unless the following conditions are satisfied”:-**

- a. *The taking of possession or acquisition is necessary for one of the public purposes therein mentioned.*
- b. *The necessity is such as to afford reasonable justification for the causing of hardship that may result to any person having interest in or right over that property.*
- c. *Provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.*

The law applicable then was the **Land Acquisition Act. Section 6(1)** of the said **Land Acquisition Act** (now repealed) provides that:-

***“where the minister is satisfied that any land is required for the purpose of a public body, and that it is necessary for the accomplishment of one of the public purposes therein set out and that the necessity therefore is such as to afford reasonable justification for the causing of any hardship, that may result to any person interested in the land and so certifies in writing to the Commissioner of lands, he may in writing direct the Commissioner to acquire the land compulsorily”.***

There is therefore a procedure provided by Section 6 of the Land **Acquisition** Act (*now repealed*) on how to compulsorily acquire any individual land. The said provisions are further repealed in **Article 40(3) of the Constitution 2010**.

It is evident that the 4<sup>th</sup> Respondent approached the Petitioner to surrender her Land (Title Deed) so that it can be compulsorily acquired for public use. The Petitioner agreed to that request and she handed her Title Deed to 4<sup>th</sup> Respondent. The proper procedure for compulsorily acquisition was not followed. The Petitioner was therefore never compensated promptly or at all and the Title Deed was given back to her in the year 2001. Since the Respondent did not compulsorily acquire the land from the Petitioner as provided by **Section 75(1)** of the old Constitution and **Section 6,8,10,13** and **19** of the land acquisition Act

(now repealed) and the Respondents never paid for the subject Land, then the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are not entitled to occupy the subject land. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent are in wrongful occupation of the Petitioner’s land, since the title deed was returned to her by the 4<sup>th</sup> Respondents in the year 2001.

The Petitioner’s right to property was well protected by Section 75 of the former Constitution which provides protection and safeguards to the owner of the land sought to be compulsorily acquired against an arbitrary acquisition of his property.

**Section 28** and **32** of the **Registered Land Act ( Cap 300** repealed) which was in force when the Petitioner’s land was to be compulsorily acquired guaranteed a proprietor who has acquired a property for valuable consideration an indefeasible title and cannot be deprived of the said property unless as provided in law. The Respondent herein acquired and used the Petitioner’s subject land without following the laid down procedures and therefore deprived her right to her property. That was contrary to **Section 75** of the old constitution, Section 6 of the land Acquisition Act (now repealed) **Section 107, 108,** and **109** of the **Land Act,** and **Article 40** of the **Constitution of Kenya 2010**.

From the above analysis, the Respondents by themselves and anyone claiming under them are not entitled to occupy the subject, land **Limuru/Rironi/T.381** and they should surrender the same and give vacant possession to the Petitioner herein.

The other issue for determination was whether the Petitioner’s fundamental rights to fair administrative action, access to information and right to a fair hearing had been violated contrary to **Article 47 of the Constitution 2010**, which provides;

**“ Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair”.**

The Petitioner submitted that her right to fair administrative action had been infringed by the Respondents as they did not inform the Petitioner of the process and stage at which the purported compulsory acquisition had reached nor did they respond to the Petitioner’s expeditiously. The 4<sup>th</sup> Respondent returned her Title Deed in the year 2001. It is evident that 4<sup>th</sup> Respondent approached the Petitioner in the year 1983 for the purpose of initiating compulsory acquisition of her Parcel of Land. However, there is no evidence that 4<sup>th</sup> Respondent explained to her the procedure for such compulsorily acquisition of land. Even after the Petitioner wrote numerous letters to the 4<sup>th</sup> Respondent, the 4<sup>th</sup> Respondent did not respond until the year 2001 when it returned the Title Deed to the Petitioner. The 4<sup>th</sup> Respondent did not act expeditiously. The Respondent had a duty to explain to the Petitioner the process and procedure for compulsorily acquisition of the subject land. Such information was to be given to her

expeditiously, and in an efficient, lawful, and reasonable time. The said information was not given to the Petitioner but the 1<sup>st</sup> and 2<sup>nd</sup> Respondents proceeded and put up a Chief's Camp and Police Station and utilized the land without informing the petitioner now the process was being undertaken and even failed to compensate her promptly.

The Petitioner right to fair administrative process are protected by Article 47 of the Constitution. The Respondents herein violated the Petitioner's rights under the said Article 47 of the Constitution and she is entitled to general damages. In awarding general damages for violation of Article 47, I will be persuaded by the two authorities quoted by the Petitioner.

1. **Rachael Auma Owiti Vs Municipal Council of Kisumu(2012) EKLR** and
2. **Dominic Arony Amolo Vs Attorney General H.C Misc. Application No.494/2003**, where the court held that monetary compensation must be reasonable and fair and taking into account all the circumstances of each case.

Though the 4<sup>th</sup> and 5<sup>th</sup> Respondents submitted that they should not be penalized to pay any damages to the Petitioner, it is evident when the Petitioner inquired from the 4<sup>th</sup> Respondent how far the process had reached, the Petitioner received no response until the year 2001 when the 4<sup>th</sup> Respondent returned her Title Deed.

The 4<sup>th</sup> and 5<sup>th</sup> Respondents are guilty too of breach of Article 47 of the constitution. I proceed to award the Petitioner general damages of **Kshs.500,000/=** Respondents herein to pay the Petitioner jointly and severally a sum of **Kshs.500,000/=** for breach of article 47 of the Constitution, 2010.

The third issue is whether the Petitioner's right to property has been infringed and if so is the Petitioner entitled to compensation under Article 40 of the constitution.

From the available evidence, it is evident that the petitioner surrendered her Title Deed to the 4<sup>th</sup> Respondent in the year 1983. She had legitimate expectations that her land would be compulsorily acquired and she was entitled to monetary compensation. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents put up a Chief's Camp and Police Station in the year 1984. The Petitioner therefore stopped cultivating the land. The Petitioner was however never compensated but the 1<sup>st</sup> and 2<sup>nd</sup> Respondents continued to utilize her land. The proper procedure for compulsory acquisition of land as provided by the law was never followed.

The petitioner was therefore arbitrary deprived of the use of her property as she was never compensated for the land and the Respondents continued to occupy and utilize her subject land. The Respondents action was contrary to **Section 75** of the Old Constitution which has now been provided for in **Article 40** of the **Constitution, 2010**.

The constitution therefore protects private property.

**Article 40(3) b (1)** provides as follows:-

**“ The state shall not deprive a person of property of any description or of any interest in or right over property of any description unless the deprivation.....**

*(b) is for a public purpose or in the public interest is carried out in accordance with the constitution and any Act of parliament that*

*i) requires prompt payment in full of just compensation to the person”.*

The Petitioner herein alleged that she has been deprived of her land and continues to be deprived. The 4<sup>th</sup>

Respondent returned the Title Deed to her in the year 2001. However, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents continues to occupy the subject land. The Petitioner has not been compensated and that is contrary to **Article 40(3) of the constitution**. The said Article requires “prompt *payment in full of just compensation to the person*”.

I will rely on the authority quoted by the petitioner. Isaac Gathungu Wanjohi & Another Vs AG & Others Nairobi Petition No.154 of 2011 (2012) ,eKLR where it was held.

**“Article 40(3) of the constitution protects a person from deprivation of property by the state unless the deprivation is for a public purpose in public interest and is carried out in accordance with the constitution or an Act of parliament and prompt payment in full of just compensation”.**

The Respondents herein ought to have followed the procedures laid down in the *Land Acquisition Act Cap 295 (LOK now repealed)* and compensate the Petitioner accordingly. The said law was breached and though the Title Deed was returned to the Petitioner that was after passage of so many years. The Respondents had utilized the land in exclusion of the Petitioner and the Petitioner has indeed lost a number of years where she could have invested in the said land. The petitioner is therefore entitled to be compensated by way of damages under article 40 of the Constitution as her right to property was breached by the Respondents.

In awarding such damages, I will be persuaded by the case of Dominic Arony Omolo (supra) where it was held that:-

**“Monetary compensation must be reasonable and fair taking into account all the circumstances of each case”.**

In the instant case, I find an award of **Kshs.2, 000,000/=** a reasonable compensation taking into account that the Petitioner has been deprived the use of this land for more than 30 years (from 1983 to-date).The damages to be paid by the Respondents herein jointly and severally.

In the light of the above, I make the following orders. The court allows petitioners petition in terms of prayers No.(a),(b) and Petitioner awarded general damages of **Kshs.500,000/=** having suffered breach of **Article 47** of the Constitution,(c)and(d) and Petitioner is awarded damages of **Kshs.2,000,000/=**for having suffered breach of **Article 40** of the Constitution. The Petitioner is also entitled to cost of the Petition to be borne by the Respondents herein.

It is so ordered.

Dated, Signed and Delivered this **28<sup>th</sup> day of March, 2014**

**L. GACHERU**

**JUDGE**

In the Presence of:-

Mr. Chenge for the Plaintiff/ Petitioner

None attendance for the 1<sup>st</sup> Defendants

None attendance for the 2<sup>nd</sup> Defendant

None attendance for the 3<sup>rd</sup> Defendant

M/s Mwongela for 4<sup>th</sup> & 5<sup>th</sup> Respondents

Lukas : Court Clerk

**L. GACHERU**

**JUDGE**

28 days Right of Appeal.

**L. GACHERU**

**JUDGE**

**28/3/2014**